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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/480,828	01/10/2000	CHARLES S. TAYLOR	GUID-006CON6	4784

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EXAMINER
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HO, UYEN T

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 01/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/480,828	<b>Applicant(s)</b> TAYLOR ET AL.	
	<b>Examiner</b> (Jackie) Tan-Uyen T. Ho	<b>Art Unit</b> 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 14,15 and 18-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 29-36 is/are allowed.
- 6) ☒ Claim(s) 14,15,18-20,25-27,37 is/are rejected.
- 7) ☐ Claim(s) 21-24 and 28 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed on 10/25/05 have been fully considered but they are not persuasive. Applicant argues that Bugge reference does not disclose the adjusting screw (10) does not operably connect the arm members. Examiner disagrees. Screw 10 connected to member 9 and member 9 connected to arm 1 and to frame 6 which connected to arm 2. Fig. 1 of Bugge reference shows all members are connected. Bugge reference discloses one arm/hook-shaped portion being lifted as the screw 10 turned (col. 2, lines 12-25).

Applicant also argues that Phillips reference does not disclose the blades 46 move upward. Examiner disagrees. Fig. 3 of Phillips reference shows the blades 46 is lifted upward relative to the blade 30. Member 47 at the end of the blade 46 rotatably relative to the frame allowed the blade to be lifted upward while it holding the edge 37 as member 16 moving away from member 15.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 14, 15, 20, 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Bugge (5,025,779). Bugge disclose a device as claimed, including a first arm

Art Unit: 3731

(elongate portion connecting to blade 2), second arm (elongate portion connecting to blade 1), a frame/base (the portion between the arms) connecting the first and second arms, an adjusting mechanism including an adjusting member (7) for moving the arms toward and away from each other and an adjusting screw (10) move the second arm upward direction. Note: a mechanism can have more than one component, in this case the adjusting mechanism having two adjusting components (7 and 10).

4. Claims 14, 15, 20, 25-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Phillips (4,865,019). Phillips discloses a frame or base portion (11), a first arm (13), a second arm (14), a first blade (30) and second blades (46), a mechanism for moving the arm away from each other (25, 21). As the arm (14) moving away from arm (13), the blades (46) pull the edge (37) upward thus the blades (46) will move upward.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bugge '779 in view of Coker (5,363,841). Bugge disclose all the limitations of the claims except for the presence of fingers extending away from the blade (1, 2). Coker discloses a retractor including blades with fingers. Therefore, it would have been

obvious to one having ordinary skill in the art at the time the invention was made to modify Bugge's blade by having fingers extending from the blade in order to provide a better gripping characteristic for the blade such that the fingers grasps the tissue and locks/parts the tissue aside.

***Allowable Subject Matter***

7. Claims 29-36 are allowed. Claims 21-24, 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art fails to disclose or suggest a support arm as claimed.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Claims 26 and 27 are mistakenly placed under allowable subject matter. However, they contains the same subject matter as other rejected claimed. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to (Jackie) Tan-Uyen T. Ho whose telephone number is 571-272-4696. The examiner can normally be reached on MULTIFLEX Mon. to Sat..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ANHTUAN NGUYEN can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



(Jackie) Tan-Uyen T. Ho  
Patent Examiner  
Art Unit 3731

July 14, 2005